has refused to exercise his statutory discretion, which if exercised might result in appellants being permitted to remain in the United States. These allegations, taken as true in the absence of denial or responsive pleading, obviously state a case for injunctive relief against alleged imminent deportation to Continental China."

To test the legality of administrative orders sending Chinese aliens to Communist China, five lawsuits, involving some fifty aliens, were filed in the District Court for the District of Columbia. (*Chu v. Brownell,* Civil Action No. 840-54; *Ning v. Brownell,* Civil Action No. 1479-54; *Fun v. Brownell,* Civil Action No. 2184-54; *Fon v. Brownell,* Civil Action No. 2179-54, and *Lim Fong v. Brownell,* supra.)

To prevent abuse of the Attorney General's extraordinary powers over the lives and destinies of our foreign born, judicial intervention is appropriate herein. The decision of the Court below, contrary to the decision of the Court of Appeals for the District of Columbia, held that judicial review was not available.

5. The decision below is in direct conflict with the mandate of 28 U.S.C. 2243, which requires that an application for a writ should be signed or entertained "unless it appear from the application that the application or person detained is not entitled thereto."

The petition was the only pleading filed in this cause. No writ or order to show cause was issued and no hearing was held. The petition charges ad-

ministrative abuse of discretion and error of law. The averments of the petition must be treated as true. *House v. Mayo,* 324 U.S. 42.

Immigration administrative decisions are subject to judicial review where the proceedings have not conformed to the traditional standards of fairness required by the due process of law clause of the Fifth Amendment to the Constitution of the United States. *Japanese Immigrant Case,* 189 U.S. 86; *Vajtauer v. Commissioner of Immigration,* 273 U.S. 103; *Wong Yang Sung v. McGrath,* 339 U.S. 33; *Kwong Hai Chew v. Colding,* 334 U.S. 590. Or where there has been arbitrariness or abuse of discretion by the administrative agency. *Low Wah Suey v. Backus,* 225 U.S. 460; *Kwock Jan Fat v. White,* 253 U.S. 454 (1920); *Carlson v. Landon,* 342 U.S. 524 (1950); *Yaris v. Esperdy,* 202 F.2d 109, 112 (2 Cir., 1953). The same general rule applies where the administrative authority commits an error of law. *Gegiow v. Uhl,* 239 U.S. 3 (1915); *Kessler v. Stecker,* 307 U.S. 22 (1939); *Bridges v. Wixon,* 326 U.S. 135 (1945); *Fong Haw Tan v. Phelan,* 333 U.S. 6 (1948); *McGrath v. Kristensen,* 340 U.S. 162 (1950).

In *Price v. Johnston,* 334 U.S. 266, 291 (1948), this Court observed:

> "Appellate Courts cannot make factual determinations which may be decisive of vital rights where the crucial facts have not been developed."

To the same effect, as to requirements of a hearing on disputed facts, are *Walker v. Johnston,* 312 U.S. 275, 285, 287 (1941); *Holiday v. Johnston,* 313 U.S.

Office Supreme Court, U.S.
FILED
APR 17 1957
JOHN T. FEY, Clerk

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. ~~915~~ 105

LENG MAY MA,
Petitioner,
vs.
BRUCE G. BARBER, District Director, Immigration and Naturalization Service, San Francisco District,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR A WRIT OF CERTIORARI

JOSEPH S. HERTOGS,
[illegible] Washington Street, San Francisco 11, California,
Attorney for Petitioner.

342, 350 (1941); *Waley v. Johnston*, 316 U.S. 101 (1942); *Cochrane v. Kansas*, 316 U.S. 255 (1942); *Stewart v. Overholzer*, 186 F.2d 339, 342 (C.A.D.C., 1950). This doctrine applies even though the Court might consider the allegations improbable or incapable of proof. *Holiday v. Johnston*, supra; *Waley v. Johnston*, supra.

In *U.S. v. Shaughnessy*, 205 F.2d 238, 240 (2 Cir., 1953) the Court held that the factual question—entrant alien or assimilated resident alien—could only be determined after a hearing on that issue.

The Court below, contrary to these decisions, refused to accept the affirmative allegations and without hearing dismissed the petition. Because of this conflict, it is submitted that certiorari is appropriate.

CONCLUSIONS.

Any delegated executive power is subject to conformance with the due process clause of the Fifth Amendment. *Ex parte Endo*, 323 U.S. 283. Any exercise of discretion must be consistent "with fundamental principles of justice embraced within the conception of the due process of law". *Tang Tung v. Edsell*, 223 U.S. 673; *Joint Fascist Refugee Comm. v. McGrath*, 341 U.S. 123; *Carlson v. Landon*, 342 U.S. 524.

Aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness en-

compassed in due process of law. *Japanese Immigrant Case (Yamataya v. Fisher),* 189 U.S. 86, 100, 101; *Wong Yang Sung v. McGrath,* 339 U.S. 33, 49, 50.

Acceptance of the decision below would "inject into our system of government the very principles of totalitarianism which Congress was seeking to guard against in passing the statute". *Stack v. Boyle,* 342 U.S. 1. Likewise, acceptance of the mandate of the administrative agency would condemn the petitioner herein to probable death or submission to principles to which she cannot adhere. It is contradictory to our American system of government to force a person so situated to accept a minor official's ultimatum without any opportunity to be heard.

For the reasons set forth, it is respectfully submitted that this petition for writ of certiorari should be granted.

Dated, San Francisco, California,
April 12, 1957.

JOSEPH S. HERTOGS,
Attorney for Petitioner.

(Appendices A, B and C Follow.)

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Appendix A

DECISION OF COURT OF APPEALS, IN RE LENG MAY MA.

United States Court of Appeals
For the Ninth Circuit

Leng May Ma, Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization Service, San Francisco District, Appellee.	No. 14,252 Feb. 5, 1957

Appeal from the United States District Court
For the Northern District of California,
Southern Division.

Before: Healy, Bone, and Lemmon, Circuit Judges

Healy, Circuit Judge

This is an appeal from the denial by the court below of a petition for the writ of habeas corpus seeking a stay of deportation.

Petitioner is a native of China. She claimed acquisition of United States citizenship at birth on the statutory ground that her father was a United States citizen. She arrived in this country in 1951, and was

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In the Supreme Court
OF THE
United States

October Term, 1956

No.

LENG MAY MA,
Petitioner,

vs.

BRUCE G. BARBER, District Director, Immigration and Naturalization Service, San Francisco District,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR A WRIT OF CERTIORARI

The petitioner, Leng May Ma, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the lower Court's dismissal of a petition for a writ of habeas corpus filed in behalf of your petitioner.

OPINIONS BELOW.

The decision of the Immigration and Naturalization Service refusing to consider petitioner's application for a stay of deportation is printed in the record, pp. 7-8. The order of the District Court (without opinion) dismissing the petition for a writ of habeas corpus is printed at page 8 in the record. The opinion of the Court of Appeals has not yet been officially reported, but it is printed in Appendix A hereto.

JURISDICTION.

The judgment of the Court of Appeals was filed and entered on February 5, 1957, Appendix A hereto. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

1. Is an excluded alien who has been physically present in the United States on parole for almost six years entitled to a stay of deportation on physical persecution grounds filed pursuant to the provisions of Section 243(h) of the Immigration and Nationality Act?

2. Does a petition for a writ of habeas corpus state a cause of action where it alleges administrative abuse of discretion and error of law?

STATUTES INVOLVED.

28 U.S.C. 2243 provides in part:

> "A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. * * *"

Section 243 of the Immigration and Nationality Act of 1952 (66 Stat. 212, 8 U.S.C. 1253) provides in part as follows:

> "(h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason."

Sections 237(a), (b) and 243(a), (h) (8 U.S.C. 1227(a), (b), and 1253(a), (h)) of the Immigration and Nationality Act, Section 18 (8 U.S.C. 154) of the Act of February 5, 1917, and Section 20 (8 U.S.C. 156) of the Act of February 5, 1917, as amended by Section 23 of the Internal Security Act of 1950, are set forth in Appendix C hereto, infra, pp. viii-xii.

Title 8 U.S.C.A. 1253.

> "Withholding of deportation.
>
> (h) The Attorney General is authorized to withhold deportation of any alien within the

United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason. June 27, 1952, c. 477, Title II, ch. 5, Sec. 243, 66 Stat. 212."

STATEMENT OF THE CASE.

Appellant was born in China in August of 1938. She claims to have acquired United States citizenship at the time of birth, pursuant to the provisions of Section 1993, United States Revised Statutes, as amended by the Act of May 26, 1934. After issuance of a travel affidavit by the American Consulate General at Hong Kong, on March 22, 1951, the appellant proceeded to the United States, arriving at the Port of San Francisco, California, on May 4, 1951. After extensive hearings conducted by the Immigration and Naturalization Service, it was concluded that the appellant had failed to establish her claim. The decision of the Immigration and Naturalization Service was affirmed by the Board of Immigration Appeals on December 3, 1953.

Pursuant to a demand directed to appellant by the San Francisco District Office of the Immigration and Naturalization Service, she surrendered for contemplated deportation to Communist China on or about January 15, 1954. Under date of January 18, 1954, there was submitted on behalf of appellant to the District Director, Immigration and Naturalization Service, San Francisco, California, in accordance with pre-

scribed regulations, an application for a stay of deportation under the provisions of Section 243(h) of the Immigration and Nationality Act of 1952. On January 21, 1954, the San Francisco Office of the Immigration and Naturalization Service advised counsel for appellant that the appellant was not eligible for the relief requested (Exhibit A, attached to the petition; T. 7).

At the time the petition for writ of habeas corpus was filed in the case at bar, deportation to Communist China was imminent. In the petition it was alleged that the appellant was denied due process of law, that her deportation to Communist China was contrary to law and the expression of Congress not to deport a person to a country where such person would suffer physical persecution and that the decision of the Immigration and Naturalization Service rejecting the application for stay of deportation was an abuse of discretion.

REASONS FOR GRANTING CERTIORARI.

This writ of certiorari is sought because the issues presented herein raise important questions of federal pleading and practice, as well as important questions pertaining to the administration of the immigration and nationality laws of the United States. In addition, the decision below is in conflict with decisions of this Court and contrary to decisions of other circuits.

1. Certiorari was previously granted by this Court in a similar case presenting the same issue—whether

an excluded alien is a person residing within the United States within the meaning of Section 243(h) of the Immigration and Nationality Act—*Jew Sing v. Barber,* 215 F.2d 906, cert. granted 348 U.S. 910, judgment vacated for mootness 350 U.S. 898.

2. The decision below accepted as an established fact that the petitioner is not a resident of the United States.

It was stated by this Court in *Savorgnan v. United States,* 338 U.S. 491, 505:

> "the actual 'place of general abode' is the sole test for determining residence."

The term residence means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact. Section 101(a) (33), Immigration and Nationality Act; 66 Stat. 170; 8 U.S.C. 1101(a) (33).

The Fifth Amendment provides without qualification that no person shall "be deprived of life, liberty, or property, without due process of law." It is not confined solely to the protection of citizens but as this Court has stated: "to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." *Yick Wo v. Hopkins,* 118 U.S. 356, 369. This protection extends to all whose presence brings them within reach of the judicial and administrative processes of our governmental bodies. *U.S. v. Pink,* 315 U.S. 203, 228.

The decision of the Court of Appeals holding that an alien physically residing in the United States and

subject to the jurisdiction thereof is not within the United States presents an important question which should be determined by this Court.

3. The decision of the Court below follows their earlier determination of the same issue in *Jew Sing v. Barber,* 215 U.S. 906. (Appendix B, infra, pp. v-vii.) In *Jew Sing v. Barber,* the Court below sought to distinguish the decision of the Court of Appeals for the District of Columbia in *Ng Lin Chong v. McGrath,* 202 F.2d 316 (1952). The Court of Appeals in *Ng Lin Chong v. McGrath,* supra, held:

> "We conclude that whenever the Attorney General chooses to delay deportation as long as he did in these cases for the purpose of prosecuting an alien who is subject to 'immediate deportation,' he cannot thereafter proceed to deport that alien under Sec. 18 since immediacy required for its application no longer exists. In that event, the procedures outlined in amended Sec. 20 must be used."

(For Sections 18 and 20, see App. C.).

Section 18 of the Immigration Act of 1917 was superseded by Section 237 of the Immigration and Nationality Act (66 Stat. 201; 8 U.S.C. 1227) (App. C). Section 20 of the Immigration Act of 1917 was superseded by Section 243 of the Immigration and Nationality Act (66 Stat. 212; 8 U.S.C. 1253) (App. C, infra).

Section 237 of the Immigration and Nationality Act provides for the deportation of an alien "who is excluded under *this* Act" and who is "immediately deported to the country whence he came." When an alien is neither excluded under the provisions of

by the Immigration Service accorded hearings on her claim but failed to establish her identity as a United States national to the satisfaction of the Service. Thereupon she was ordered to surrender for deportation to China. She petitioned the Service for a stay on the ground that she would be subjected to physical persecution and probable death if she were to return to China, seeking this relief on the basis of §243(h) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. §1253(h)), reading as follows:

> "The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason."

The Service notified petitioner that no stay of deportation could be granted her inasmuch as aliens excluded from the United States are not eligible for relief under the above statute. She then brought this proceeding in habeas corpus.

The question for decision is whether an alien seeking admission to the United States is "within the United States" after his application for such admission has been decided against him. This court has recently held the contrary, stating that the status of such "person released by the immigration authorities on bond is still that of a person without the United States seeking admission." Jew Sing v. Barber, 215 F.2d 906, 907 (1954), cert. granted 348

U.S. 910, judgment vacated for mootness 350 U.S. 898 (1955).

Some doubt is cast on our holding in *Jew Sing* because of the granting by the Supreme Court of certiorari therein, notwithstanding the subsequent vacation for mootness of this court's judgment. However, *Jew Sing* appears to us a much weaker case from the government's standpoint than that of the petitioner here. It appears that Jew Sing had resided continuously in the United States from 1921 until 1947, when he made a visit to China, returning to this country a few months later. He was refused admission and ordered deported, but was then paroled by the Service under bond to afford him an opportunity to petition for naturalization as an honorably discharged veteran of World War II. In the case now before us the petitioner had had no prior residence here. During her entire stay in this country she was enlarged only at the sufferance of the Immigration Service.

Considering all circumstances we are persuaded that the denial by the trial court of the writ of habeas corpus was not error, and its order is accordingly affirmed.

(Endorsed:) Opinion. Filed Feb. 5, 1957.
Paul P. O'Brien, Clerk.

United States Court of Appeals
For the Ninth Circuit

Leng May Ma Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization, Appellee.	No. 14252

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

(Endorsed) Judgment.

Filed and Entered: February 5, 1957.
Paul P. O'Brien, Clerk.

Appendix B

DECISION OF COURT OF APPEALS, IN RE JEW SING.

United States Court of Appeals
For the Ninth Circuit

Jew Sing, Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization Service, San Francisco District, Appellee.	No. 14,146 Sep. 8, 1954

Appeal from the United States District Court for the Northern District of California.

Before: Denman, Chief Judge, and Bone and Orr, Circuit Judges.

Denman, Chief Judge:

Jew Sing appeals from a decision of the district court denying without hearing his application to be released from the custody of Bruce G. Barber, acting as District Director of the San Francisco Immigration and Naturalization Service, hereafter Director Barber.

The application alleges that Jew Sing on October 14, 1947, arrived at the Port of San Francisco and then claimed admission as a native-born American

citizen. His claim to be admitted was considered in exclusion proceedings during which he was released under bond. The proceedings were decided against him and after a delay of over six years he was notified on November 3, 1953, to surrender himself to Director Barber to be excluded by deportation as soon as travel accommodations could be provided. He is now in Director Barber's custody.

Prior to this, in September, 1953, Jew Sing filed an application for a stay of deportation under the provisions of 8 C.F.R. 243.3(h) (8 U.S.C.A. 1253(h)), alleging that deportation to China would subject him to physical persecution. The appellant was advised by the Immigration and Naturalization Service that Section 243(h) did not apply to his case.

Section 243(h), Immigration and Nationality Act (8 U.S.C.A. 1253(h)) provides:

> "The Attorney General is authorized to withhold deportation of *any alien within the United States* to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason." (Emphasis supplied.)

The question is whether an alien seeking admission to the United States is "within the United States" while his application for such admission is under consideration and after it has been decided against him. We think not. His status as a person released by the immigration authorities on bond is still that of a person without the United States seeking admission. Kaplan v. Tod, 267 U.S. 228; United States v.

Spar, 149 F.2d 881 (Cir. 2); United States v. Corsi, 65 F.2d 322 (Cir. 2).

Jew Sing contends that the case of Ng Ling Chong v. McGrath, 202 F.2d 316, 317 (C.A., D.C.) holds the contrary. We do not agree. The Act there controlling the Attorney General, § 20 of 39 Stats. 874, 890, as amended 8 U.S.C.A., § 156 reads:

> "No alien shall be deported under any provisions of this chapter to any country in which the Attorney General shall find that such alien would be subjected to physical persecution."

This earlier § 20 provision contains no limitation to aliens other than those "within the United States" of the now applicable act. We are required to give effect and not make nugatory such significant changes in statutory provisions. United States v. Bashaw, 50 Fed. 749, 753; 754 (Cir. 8).

The judgment is affirmed.

(Endorsed:) Opinion. Filed Sep. 8, 1954. Paul P. O'Brien, Clerk.

Appendix C

Section 18—Act of February 5, 1917, 8 U.S.C.A. 154.

"Immediate deportation of aliens brought in in violation of law; cost of maintenance and return.

All aliens brought to this country in violation of law shall be immediately sent back, in accommodations of the same class in which they arrived, to the country whence they respectively came, on the vessels bringing them, unless in the opinion of the Attorney General immediate deportation is not practicable or proper. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came. It shall be unlawful for any master purser, person in charge, agent, owner, or consignee of any such vessel to refuse to receive back on board thereof, or on board any other vessel owned or operated by the same interests, such aliens; or to fail to detain them thereon; or to refuse or fail to return them in the manner aforesaid to the foreign port from which they came; or to fail to pay the

Section 237, Immigration and Nationality Act, 8 U.S.C.A. 1227.

"Immediate deportation of aliens excluded from admission or entering in violation of law —maintenance expenses.

(a) Any alien (other than an alien crewman) arriving in the United States who is excluded under this chapter, shall be immediately deported to the country whence he came, in accommodations of the same class in which he arrived, on the vessel or aircraft bringing him, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper. The cost of the maintenance including detention expenses and expenses incident to detention of any such alien while he is being detained, as well as the transportation expense of his deportation from the United States, shall be borne by the owner or owners of the vessel or aircraft on which he arrived, except • • •

Unlawful practice of transportation lines.

(b) It shall be unlawful for any master, commanding offi-

cost of their maintenance while on land; or to make any charge for the return of any such alien, or to take any security for the payment of such charge; or to take any consideration to be returned in case the alien is landed; • • •"

cer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft (1) to refuse to receive any alien (other than an alien crewman), ordered deported under this section back on board such vessel or aircraft or another vessel or aircraft owned or operated by the same interests; (2) to fail to detain any alien (other than an alien crewman) on board any such vessel or at the airport of arrival of the aircraft when required by this chapter or if so ordered by an immigration officer, or to fail or refuse to deliver him for medical or other inspection, or for further medical or other inspection, as and when so ordered by such officer; (3) to refuse or fail to remove him from the United States to the country whence he came; (4) to fail to pay the cost of his maintenance while being detained as required by this section or section 1223 of this title; (5) to take any fee, deposit, or consideration on a contingent basis to *ke*[1] kept or returned in case the alien is landed or excluded; • • •"

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[1]So in original. Probably should read "be".

Section 20, Act of February 5, 1917, 8 U.S.C.A. 156.

"Ports to which aliens to be deported, cost of deportation.

The deportation of aliens provided for in this chapter shall, at the option of the Attorney General, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or, if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States.

* * *"

Section 23 of the Internal Security Act of 1950 (Public Law 831, 81st Cong., 2d Sess.; 64 Stat.) 8 U.S.C.A. 156, amended Section 20 of the Immigration Act of February 5, 1917 so as to read, in pertinent part, as follows:

"Sec. 20(a) That the deportation of aliens provided for in this Act and all other immigration laws of the United States shall be directed by the Attorney General to the country specified by the alien, if it is willing to accept him into its territory; otherwise such deportation shall be directed by the Attorney General within his discretion and without priority of preference because of their order as herein set forth, either to the country from which such alien last entered the United States or to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory; or to any country in which he resided prior to entering the country from which he entered the United States or to the country which had sovereignty over the birthplace of the alien at the time of his birth; or to any coun-

Section 243 of the Immigration and Nationality Act, 8 U.S.C.A. (effective December 24, 1952).

"Countries to which aliens shall be deported—Acceptance by designated country; deportation upon nonacceptance by country.

(a). The deportation of an alien in the United States provided for in this chapter, or any other Act or treaty, shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States. • • • Thereupon deportation of such alien shall be directed to any country of which such alien is a subject[1] national, or citizen if such country is willing to accept him into its territory. If the government of such country fails finally to advise the Attorney General or the alien within three months following the date of original inquiry, or within such other period as the Attorney General shall deem reasonable under the circumstances in a particu-

[1]So in original. Probably should read with a ",".

Act of February 5, 1917 (8 U.S.C. 156) to read as follows:

> "SEC. 20(a). That the deportation of aliens provided for in this Act and all other immigration laws of the United States shall be directed by the Attorney General to the country specified by the alien, if it is willing to accept him into its territory; otherwise such deportation shall be directed by the Attorney General within his discretion and without priority of preference because of their order as herein set forth, either to the country from which such alien last entered the United States or to the country in which such alien embarked for the United States or for foreign contiguous territory; or to any country in which he resided prior to entering the country from which he entered the United States or to the country which had sovereignty over the birthplace of the alien at the time of his birth; or to any country of which such alien is a subject, national, or citizen; or to the country in which he was born; or to the country in which the place of his birth is situated at the time he is ordered deported; or, if deportation to any of the said foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory. . . . No alien shall be deported under any provisions of this Act to any country in which the Attorney General shall find that such alien would be subjected to physical persecution."

Section 212(d)(5) of the Immigration and Nationality Act of 1952 (66 Stat. 188, 8 U.S.C. 1182(d)(5)) reads as follows:

try of which such an alien is a subject, national, or citizen; or to the country in which he was born; or to the country in which the place of his birth is situated at the time he is ordered deported; or, if deportation to any of the said foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory. * * * No alien shall be deported under any provisions of this Act to any country in which the Attorney General shall find that such alien would be subjected to physical persecution."

lar case, whether that government will or will not accept such alien into its territory, then such deportation shall be directed by the Attorney General within his discretion and without necessarily giving any priority or preference because of their order as herein set forth either— * * *.

Withholding of deportation.

(h) The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason."

"The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served, the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

Section 237 of the Immigration and Nationality Act of 1952 (66 Stat. 201; 8 U.S.C. 1227) reads as follows:

"Immediate deportation of aliens excluded from admission or entering in violation of law—Maintenance expenses.

(a) Any alien (other than an alien crewman) arriving in the United States who is excluded under this chapter, shall be immediately deported to the country whence he came, in accommodations of the same class in which he arrived, on the vessel or aircraft bringing him, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper. The cost of the maintenance including detention expenses and expenses incident to detention of any such alien while he is being detained, as well as the transportation expense of his deportation from the United States, shall be borne by the owner or owners of the vessel or aircraft on which he arrived, . . ."